

1 DAVID BROWN

2 F-55818

3 P.O. BOX 600 CIM/MSF

4 CHINO, CA. 91708-0600

5 IN PROPRIA PERSONA

FILED

2008 MAY -7 PM 3:49

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY Rm DEPUTY

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 DAVID BROWN

12 PETITIONER

CASE # 08 CV0017 JM (NLS)

13
14 VS.

TRAVERSE

TO THE RETURN TO PETITION

WRIT OF HABEAS CORPUS

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17 M.E. POULOS (WARDEN) ET. AL;

18 RESPONDENT (S)

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20 TO THE HONORABLE PRESIDING JUSTICE AND ALL PARTIES CONCERNED: THE PETITIONER
21 DAVID BROWN, NOW COMES TO MOVE FOR AN TRAVERSE/DENIAL TO THE ANSWER BY RESPONDENT (S)
22 AS FOLLOWS:
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TABLE OF CASES

1 HERBERT V. LOUISIANA (1926) 272 U.S. 312, 47 S. CT. 103. GONZALEZ V. CROSBY (2005)
2 545 U.S. 524. CALDERON V. THOMPSON (1998) 523 U.S. 538,
3 SCHLUP V. DELO (1995) 513 U.S. 298
4 HERRERA V. COLLINS (1993) 506 U.S. 390
5 SAWYER V. WHITLEY (1992) 505 U.S. 333
6 MURRAY V. CARRIER (1986) 477 U.S. 436
7 FAY V. NOIA (1963) 372 U.S. 391
8 GOMEZ V. SUPERIOR COURT (1958) 50 CAL. 2D 640, 644
9 PEOPLE V. SHUEY (1975) 13 CAL. 3D 835
10 PEOPLE V. BROCKLEHURST (1971) 14 CAL. APP. 3D 473
11 PATTY V. BOARD OF MEDICAL EXAMINERS (1973) 9 CAL. 3D 356
12 PEOPLE V. MCINTYRE (1990) 271 CAL. RPTR. 467
13 NAYLOR V. SUPERIOR COURT OF ARIZONA (9TH CIR. 1977) 558 F. 2D 1363
14 NORTH CAROLINA V. RICE (1971) 404 U.S. 244, 246
15 U.S. V. GONZALES (9TH CIR. 1976) 539 F. 2D 1238
16 U.S. V. RYAN (1976) 548 F. 2D 782
17 TOWNSEND V. SAIN (1963) 372 U.S. 293, 313
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ADMITS OR DENIAL TO CLAIMS

- 1) ADMITS TO QUESTIONS/CLAIMS OF SUCCESSIVE PETITION.
- 2) ADMITS THAT THE PETITION CAN PASS THROUGH THE GATEWAY.
- 3) DENIAL TO ANY CLAIMS THAT THE PETITION IS WITHOUT MERIT.
- 4) ADMITS THAT THIS IS AN EXTRAORDINARY CASE AND IS DESERVING OF CONSIDERATION.
- 5) ALSO BECAUSE PETITIONER IS UNCLEAR AS TO ANY MOOTNESS THAT WOULD BAR CONSIDERATION.
BUT PETITIONER NOW AFFIRMATIVELY ALLEGES THAT SOME FORM OF COLLATERAL CONSEQUENCES
WILL OCCUR. THE PROBLEM IS RESTRICTION FROM CERTAIN AID/RELIEF, JOBS IN CERTAIN
BUSINESS FROM HIS RELEASE FROM PRISON/CONVICTION.
- 6) ADMITS THAT A FEDERAL COURT MUST GRANT AN EVIDENTIARY HEARING UNDER CERTAIN
CIRCUMSTANCES.
- 7) ADMITS THAT A CONVICTION CANNOT STAND IF EVEN A SINGLE JUROR HAS BEEN IMPROPERLY
INFLUENCED.
- 8) ADMITS THAT A COURT MAY EXERCISE ITS SUPERVISORY POWERS TO DISMISS INFORMATION
TO REMEDY CONSTITUTIONAL OR STATUTORY VIOLATION, (EQUAL PROTECTION OF THE LAW)
IN AN "ACTION MALUM IN SE"
- 9) RESPONDENT'S RETURN IN UNTRUE BECAUSE IT ALLEGE THAT PETITIONERS CUSTODY IS
LAWFUL AND PROPER.

SERVED BY RELITIGATING OF CLAIMS.

1 THE ENDS OF JUSTICE REQUIRED RECONSIDERED OF THIS PETITION FOR HABEAS CORPUS, CONVENTIONAL
2 NOTICE OF FINALITY OF LITIGATION HAVE NO PLACE WHERE LIFE OR LIBERTY IS AT STAKE AND
3 INFRINGEMENT OF CONSTITUTIONAL RIGHTS IS ALLEGED. SINCE 1867, WHEN CONGRESS FIRST AUTHORIZED
4 THE FEDERAL COURTS TO ISSUE THE WRIT ON BEHALF OF PERSONS IN STATE CUSTODY. HERE'S
5 A (QUOTE PER JUSTICE POWELL, WITH TWO JUSTICES, AND THE CHIEF JUSTICE CONCURRING).
6 FEDERAL COURT SHOULD CONSIDER THE ENDS OF JUSTICE BEFORE DISMISSING SUCCESSIVE HABEAS
7 CORPUS PETITION AS A MEANS OF IDENTIFYING THE RARE CASE IN WHICH THE COURT SHOULD
8 EXERCISE ITS DISCRETION TO HEAR A SUCCESSIVE PETITION:

9 HOWEVER, SINCE HABEAS CORPUS IS AT ITS CORE AN EQUITABLE REMEDY, A COURT MUST
10 ADJUDICATE EVEN SUCCESSIVE CLAIMS WHEN REQUIRED TO DO SO BY THE ENDS OF JUSTICE. THE
11 COURT MAY FIND A EXCEPTION FOR FUNDAMENTAL MISCARRIAGE OF JUSTICE. EXCEPTION IS "RARE"
12 AND CAN BE APPLIED IN "EXTRAORDINARY CASE" AND TO EXTENDED TO THOSE WHO ARE TRULY DESERVING.
13 THE PETITIONER HAS THE RIGHT UNDER THE LAW OF THE STATE TO RAISE, BY ANY AVAILABLE
14 PROCEDURE, TO DEVELOP THE FACTUAL BASTIS OF A CLAIM AND IF PASSES THE BURDEN OF REBUTTING
15 THE PRESUMPTION OF CORRECINESS THE CLAIM RELIES ON. THE COURT MAY CALL FOR EVIDENTIARY
16 HEARING ON THE CLAIM. THAT ESTABLISH BY CLEAR AND CONVINCING EVIDENCE. BUT FOR THE
17 CONSTITUTIONAL ERROR, NO REASONABLE FACIFINDER WOULD HAVE FOUND HIM GUILTY. THE PROBLEM
18 BEING IS A DEFENSE REGARDING "EXTRAORDINARY CIRCUMSTANCES" "ENTRAPMENT" AND KNOWLEDGE
19 OF CUSTODY OF ONE WHO IS TO BE REGARDED AS INNOCENCE UNTIL PROVEN GUILTY, AND NOT GUILTY
20 BEFORE PROVEN INNOCENT. IN THAT LIGHT A FACIFINDER WOULD BE INFLUENCED BY THE PHYSICAL
21 IMPRISONMENT/RESTRAINTS ON THE DEFENDANT AND WOULD RENDER SUCH PROCESS INEFFECTIVE
22 TO PROTECT THE RIGHTS OF THE PETITIONER CAUSING THE PROCEDURE TO BE FUNDAMENTALLY UNFAIR.
23 THERE ARE TWO STANDARD, ONE IS UNDER CARRIER, THE OTHER UNDER SAWYER. THE PETITIONER
24 FALL UNDER BOTH "ACTUAL INNOCENCE" AND "MISCARRIAGE OF JUSTICE" BY CONSTITUTIONAL ERROR.
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EXTRAORDINARY CIRCUMSTANCESEXCEPTION RELEVANT TO WATERSHED RULESCRIMINAL PROCEDURE IMPLICATING FUNDAMENTALFAIRNESS AND ACCURACY OF THE CRIMINAL PROCEEDING

FIRST IS THE QUESTION OF THE FUNDAMENTAL FAIRNESS AND ACCURACY OF THE CRIMINAL PROCEEDING WHICH MUST MEET THESE TWO REQUIREMENTS. ANY INFRINGEMENT OF THE RULE MUST SERIOUSLY DIMINISH THE LIKELIHOOD OF OBTAINING AN "ACCURATE CONVICTION" AND THE RULE MUST ALTER THE COURTS UNDERSTANDING OF THE "BEDROCK" PROCEDURAL ELEMENT ESSENTIAL TO THE FAIRNESS OF A PROCEEDING.

HERE BECAUSE OF THE PHYSICAL RESTRAINTS ON A MANS LIBERTY, WHICH CAUSE THE JURY TO DRAW INFERENCES/INFLUENCE TOO. CAUSING THE DEFENDANT TO RECEIVE AN UNFAIR TRIAL. THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT BARS REPROSECUTION FOR THE SAME OFFENSE. IF SUCH PROCEDURE IS FUNDAMENTALLY UNFAIR. ALSO THE DEFENDANT WAS REFUSED LEAVE TO ENTER THE PLEA OF FORMER JEOPARDY BY "JUDGE LASATER" WHO ATTACK THE PETITIONER'S CHARACTER TO HIS OBJECTIONS TO CONSENT TO MISTRIAL. THE STATE WITH ALL ITS RESOURCES AND POWER SHOULD NOT BE ALLOWED ~~NOT BE ALLOWED~~ TO MAKE REPEATED ATTEMPTS TO CONVICT AN INDIVIDUAL FOR AN ALLEGED OFFENSE, THEREBY SUBJECTING HIM TO EMBARRASSMENT, AND COMPELLING HIM TO LIVE IN A CONTINUING STATE OF ANXIETY AND INSECURITY, EVEN THOUGH INNOCENT HE MAY BE FOUND GUILTY. BECAUSE OF "EXTRAORDINARY" "CIRCUMSTANCE" SURROUNDING A ENTRAPMENT DEFENSE, AND JURY CAN BE MISLEAD BY SEEING A DEFENDANT IN CUSTODY/DRAW INFLUENCE.. THE DEFENDANT HAS PROVEN THAT THE CRIME WAS SUGGESTED BY THE UNDERCOVER OFFICER MARTINEZ. THE DEFENDANT IS NOT CRIMINALLY LIABLE BY THE LAW. SEE PATTY V. BOARD OF MEDICAL EXAMINERS (1973) 9 CAL. 3D 356, ALSO SEE PEOPLE V. MCINTYRE (1990) 271 CAL. RPTR 467.

EQUAL PROTECTION COMPONENT OF DUE PROCESS CLAUSE IMPOSES CONSTITUTIONAL CONSTRAINTS ON PROSECUTOR'S DISCRETION.

BUT BECAUSE OF THE INTENTIONAL, INVIDIOUS, DISCRIMINATION BY THE SAN DIEGO POLICE DEPARIMENT, THE DISTRICT ATTORNEY'S OFFICE AND THE SAN DIEGO COUNTY SUPERIOR COURT ARE ENGAGED IN A DELIBERATE SYSTEMATIC PRACTICE OF DISCRIMINATORY ENFORCEMENT OF CRIMINAL LAW.

CONCLUSION

1 A FEDERAL COURT MUST GRANT AN EVIDENTIARY HEARING TO A HABEAS CORPUS APPLICANT UNDER
2 THE FOLLOWING CIRCUMSTANCES:

- 3 1). THE MERITS OF THE FACTUAL DISPUTE WERE NOT RESOLVED IN THE STATE HEARING.
4 2). THE STATE FACTUAL DETERMINATION IS NOT FAIRLY SUPPORTED BY THE RECORD AS A WHOLE.
5 3). THE FACIFINDING PROCEDURE EMPLOYED BY THE STATE COURT WAS NOT ADEQUATE TO AFFORD
6 A FULL AND FAIR HEARING.
7 4). THERE IS A SUBSTANTIAL ALLEGATION OF NEWLY DISCOVERED EVIDENCE.
8 5). THE MATERIAL FACTS WERE NOT ADEQUATELY DEVELOPED AT STATE COURT HEARING.
9 6). FOR ANY REASON IT APPEARS THAT THE STATE TRIER OF FACT DID NOT AFFORD THE HABEAS
10 APPLICANT A FULL AND FAIR FACIFINDING HEARING.

11 AND IN THE PRESUMPTION OF CORRECINESS THE APPLICANT DID NOT RECEIVE A FULL, FAIR AND
12 ADEQUATE HEARING IN THE STATE COURT PROCEEDING AND WAS DENIED DUE PROCESS OF LAW IN
13 THE STATE COURT PROCEEDING. TOWNSEND VS. SAIN (1963) 373, U.S. 293, 313
14 IF OFFICER MARTINEZ IS IMMUNE FROM PROSECUTION SO IS THE PETITIONER DAVID BROWN UNDER
15 THE (EQUAL PROTECTION OF THE LAW BY THE UNITED STATES CONSTITUTION).

DECLARATION OF DAVID BROWN

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I, DAVID C. BROWN, DO DECLARE AS FOLLOWS:

- 1). THAT I AM THE DEFENDANT/PETITIONER IN SAID ACTION.
- 2). THAT I AM OVER THE AGE OF 18 YEARS.
- 3). THAT I MAKE THIS DECLARATION IN SUPPORT OF TRAVERSE

I, DAVID BROWN, DO DECLARE THAT THE AFOREMENTIONED IS TRUE AND CORRECT UNDER PENALTY
OF PERJURY BY THE LAWS OF THE STATE OF CALIFORNIA

DATE: *5-04-2008*

RESPECTFULLY SUBMITTED

David C. Brown

DAVID BROWN

IN PROPRIA PERSONA

**CALIFORNIA INSTITUTION FOR MEN
PROOF OF SERVICE BY MAIL**

(C.C.P. §1013a; §2015.5; Fed.R.Civ.P. 5; 28 U.S.C. 1746)

I am over the age of eighteen years, a citizen of the United States, a resident of the State of California, (A) and / and not a party to the within action. My mailing address is: P.O. BOX 600, CHINO, CA 91708-0600.

On the following date: (B) DAVID BROWN 5-04-08, I served the following document(s): (C)

① TRAVERSE TO THE RETURN

On the interested parties in this action by placing true copies thereof, enclosed in sealed envelopes, addressed as follows to the following parties: (D)

U.S. DISTRICT COURT (SOUTHERN-
DISTRICT) 880 FRONT ST. RM #4290
SAN DIEGO, CA. 92101

OFFICE OF ATTORNEY GENERAL
110 WEST "A" STREET. STE #1100
P.O. BOX 85264
SAN DIEGO, CA. 92186-5264

I am readily familiar with the normal business practices for collection and processing of correspondence and other materials for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, in a sealed envelope with postage fully prepaid, it is deposited in a box so provided at the correctional institution in which I am presently confined.

I certify (or declare) under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(E) Name: DAVID BROWN CDCR#: F55818

Signed: David C. Brown Dated: 5-04-2008

CIM MAILROOM ACKNOWLEDGEMENT OF MAILING

DATED: 5/5/08 STAFF: Opn

SIGNED: _____